

REMARKS

Favorable reconsideration and allowance of the present application is respectfully requested.

Currently, claims 62-80, including independent claim 62, are pending in the present application. In the Office Action, previous independent claim 42 was rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,867,051 to Anderson, et al. Anderson, et al. is directed to a point of care system for medical diagnosis of a patient. One embodiment of the system is shown in perspective in Fig. 7. Specifically, a reader 600 is shown that has a reader head assembly 704 and a cassette slot 602 located at a front edge of a lower housing 702. When an immunoassay device 200 is inserted into the slot 602, the reader head assembly 704 is positioned directly above the device 200. (Col. 18). To read the strip, the reader head is brought within a certain distance of the strip. (Col. 19).

However, as emphasized in Applicants' previous response, Anderson, et al., fails to disclose various aspects of the present claims, such as a reading device having a "light barrier structure" of the particular configuration required by independent claim 62. The recent Office Action nevertheless responded as follows:

. . . the only light leakage [in Anderson, et al.] is through the entrance slot. The Office has read this as teaching the ***housing shields the strip from all other ambient light***. The instant claims do not specify the amount of light shielding (e.g. the claims do not state that there is no ambient light). The Office has properly applied Anderson, et al. as this reference teaches shielding the strip from all ambient light except for that light coming through the entrance slot. (*Emphasis added*).

However, the mere fact that the housing might block ambient light has *no bearing whatsoever* on whether Anderson, et al. discloses the claimed "light barrier structure."

Namely, the reading device of independent claim 62 presently requires two (2) separate components:

(1) a “housing” within which is contained an electromagnetic radiation source and a sensor capable of detecting the intensity of electromagnetic radiation; and

(2) a “light barrier structure” positioned adjacent to an exterior surface of the housing. Notably, the light barrier structure defines *a receiving port between a top plate and bottom plate* for insertion with the membrane strip. Further, the *bottom plate* of the light barrier structure *defines a region through which electromagnetic radiation from the source is capable of passing* before contacting the lateral flow membrane strip. The region *approximates the size of the detection zone*. In the embodiment shown in Figs. 3-4 of the present application, for instance, the bottom plate 56 and top plate 50 define a receiving port 53 through which the lateral flow membrane strip may be inserted. Upon insertion, light generated by a source is capable of passing through an aperture 54 to contact the strip. Light reflected by the strip may also pass through the aperture 54. Due to the size of the aperture relative to the detection zone, the total area through which light is allowed to pass is minimized, thereby optimizing the signal to noise ratio.

Even if the housing of Anderson, et al. shields all other ambient light as suggested by the Office Action, Anderson, et al. still fails to disclose a separate “light barrier structure”, and particularly one that has the specific configuration noted above. For example, the lateral flow strip of Anderson, et al. is inserted into the *same housing* (e.g., housing 702) within which the reader head assembly 704 is located. (Fig. 7). Simply stated, there is *no light barrier structure* that contains a plate positioned adjacent to the exterior surface of the housing as required by independent claim 62. Thus, for at

least the reasons set forth above, Applicants respectfully submit that the present claims patentably define over Anderson, et al.

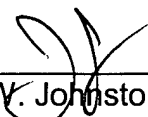
In the Office Action, independent claim 62 was also rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,837,546 to Allen, et al. Allen, et al. is directed to an assay device for determining the presence of one or more analytes. However, Allen, et al. suffers from the same deficiencies as Anderson, et al. in that it fails to disclosed the "light barrier structure" as set forth in independent claim 62. For at least this reason, Applicants respectfully submit that the present claims patentably define over Allen, et al.

Claims 26-50 were also provisionally rejected in the Office Action under the judicially created doctrine of obviousness-type double patenting in view of copending applications 10/013,973, 10/026,415, and 10/084,763. In response, Applicants agree to submit terminal disclaimers, to the extent necessary to obviate this rejection, at such time that the present application is otherwise deemed in condition for allowance.

It is believed that the present application is in complete condition for allowance and favorable action is respectfully requested. Examiner Alexander is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment. Please charge any fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

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